U.S. Senate
Republican Policy
Committee

Legislative Notice

Jon Kyl, Chairman

No. 71 July 20, 2004

# S. 2677 – The United States-Morocco Free Trade Agreement Implementation Act

*S. 2677 was ordered favorably reported without amendment by the Committee on Finance today, by a vote of 21-0.*

## Noteworthy

- S. 2677 would implement the Free Trade Agreement between the United States and Morocco, which was signed on June 15, 2004. The implementation act is being considered under expedited procedures known as "fast track" trade authority, which was granted by the Trade Act of 2002 (P.L. 107-210). Under this law, neither the reporting committee nor the Senate (nor the House) may amend the bill. Further, debate time in the Senate is limited to 20 hours, equally divided.

- Following the signing of the trade agreement on June 15, the Administration submitted the draft implementing legislation to Congress on July 6, 2004. The Finance Committee held the "mock" markup of the proposed legislation on July 15, 2004. In accordance with the Trade Act, formal implementing legislation was subsequently introduced in both chambers as S. 2677 and H.R. 4842.

- The United States-Morocco Free Trade Agreement is an integral part of President Bush's strategy to create a Middle East Free Trade Area by 2013. Existing free trade agreements in the region include Israel and Jordan. The Administration completed free trade negotiations with Bahrain on May 27, 2004.

## Highlights

- President Bush's Middle East Trade Initiative includes a series of policies and actions intended to increase trade and investment with the Middle East, thereby encouraging countries of the region to implement domestic reforms, institute the rule of law, protect private property rights (including intellectual property), and create a foundation for openness, economic growth, and prosperity.

- The U.S.-Morocco Free Trade Agreement is an integral part of President Bush's strategy to create a Middle East Free Trade Area by 2013. The Agreement has broad support in Congress, the American business community, and Morocco.

- Morocco was the first country in the world to recognize the newly-sovereign United States in 1777. The Treaty of Peace and Friendship between the United States and Morocco, negotiated in 1787, is the longest unbroken treaty relationship in U.S. history.

- In a meeting at the White House on April 23, 2002, President Bush and Moroccan King Mohammed VI announced that the two countries would seek to negotiate a free trade agreement (FTA).

- Following a series of negotiating meetings in 2003, a bilateral FTA was concluded on March 2, 2004. On June 15, 2004, the agreement was signed by U.S. Trade Representative Robert Zoellick and Moroccan Minister-Delegate of Foreign Affairs and Cooperation Taib Fassi-Fihri.

- In the Middle East, the United States has implemented free trade agreements with Israel and Jordan, and recently concluded FTA negotiations with Bahrain. Also, the Administration is negotiating accession to the World Trade Organization for Saudi Arabia, Lebanon, Algeria, and Yemen.

- Morocco will be the eighth country to have a bilateral free trade agreement with the United States, joining Canada, Mexico, Israel, Jordan, Chile, Singapore, and Australia.

- The Agreement with Morocco is a comprehensive agreement that achieves the Congressional negotiating objectives set forth in the Bipartisan Trade Promotion Authority Act of 2002.

- The Administration consulted closely and continuously with the Senate Finance Committee, the Congressional Oversight Group, Congressional leadership, and interested parties throughout the negotiation process.

- More than 95 percent of bilateral trade in consumer and industrial products will become duty-free immediately upon entry into force of the agreement, with all remaining tariffs eliminated within nine years.

- According to the United States Trade Representative (USTR), the Morocco Agreement is "the best market access package of any U.S. free trade agreement with a developing country."[1]

- The Agreement covers all agricultural products, opening the Moroccan market for many U.S. farm products.

## Background

Negotiations of the U.S.-Morocco Free Trade Agreement began in January 2003 and consisted of eight rounds of discussions. The Agreement was completed on March 2, 2004. On March 8, 2004 the President notified Congress of his intention to enter into a free trade agreement with the Kingdom of Morocco.

On June 15, 2004, the agreement was signed by U.S. Trade Representative Robert Zoellick and Moroccan Minister-Delegate of Foreign Affairs and Cooperation Taib Fassi-Fihri. Also on June 15, the Senate Finance Committee held a public hearing and received public testimony on the U.S.-Morocco Free Trade Agreement. In accordance with the requirements of the Bipartisan Trade Promotion Authority Act of 2002, the Administration developed draft implementing legislation and a draft Statement of Administration Action (SAA) in close consultation with the Senate Finance Committee.

The Finance Committee held a public hearing to consider the draft implementing legislation and draft SAA on June 23, 2004. On July 15, the Administration sent the final implementing legislation and the final SAA to the Congress for formal introduction. S. 2677, a bill to implement the United States-Morocco Free Trade Agreement, was introduced by Senators Grassley, Baucus, and Frist on July 15, 2004.

Morocco is an emerging market that imported nearly $13 billion worth of goods in 2003, of which the United States supplied $462 million. Morocco's average bound rate of duty is 42 percent ad valorem, and its average applied rate for U.S. exports is 20 percent. By comparison, Moroccan exports to the United States are subject to an average tariff of 4 percent ad valorem because Morocco is eligible for duty-free treatment under the Generalized System of Preferences. Under the FTA, more than 95 percent of bilateral trade in consumer and industrial products will become duty-free on the day that the Agreement is implemented, with tariffs on the remaining products being eliminated within nine years. Such significant market access results led USTR to describe the Morocco FTA as "the best market access package of any U.S. free trade agreement with a developing country. "

[1] USTR Press Release, March 2, 2004.

Key U.S. export sectors that will gain immediate duty-free access include information technologies, machinery, construction equipment, and chemicals. Also, textile and apparel articles that meet the Agreement's rules of origin will become duty-free. Tariffs on agricultural products such as sorghum, corn, soybeans, and corn and soybean products will be cut significantly, or eliminated immediately. U.S. farmers and ranchers of poultry and beef will benefit from new tariff-rate quotas that grow over time, and U.S. wheat producers will benefit from new tariff-rate quotas on durum and common wheat that could lead to five-fold increases in U.S. exports.

The Agreement also liberalizes markets for services, including financial services and telecommunications, establishes new protections for U.S. investors, strengthens penalties for piracy and counterfeiting, and provides strong protections for labor and environment. It is noteworthy that the negotiation of an FTA with the United States prompted the Government of Morocco to complete a comprehensive reform of its labor laws that took effect on June 8, 2004.

Finally, Morocco has begun implementing an association agreement with the European Union (EU). The association agreement, which only covers industrial products, gives EU companies a competitive advantage in the Moroccan market. Importantly, the U.S.-Morocco Free Trade Agreement will give U.S. exporters of industrial products a chance to compete in the Moroccan market on equal terms with European competitors. Moreover, the U.S.-Morocco FTA gives U.S. agricultural producers significant tariff advantages over the EU, as well as other competitive suppliers.

# Bill Provisions

## TITLE I – Approval Of, and General Provisions Relating To, the Agreement

### Sec. 1: Short Title; Table of Contents

This section provides that the short title of the Act is the "United States-Morocco Free Trade Agreement Implementation Act."

### Sec. 2: Purposes

This section provides the purposes of the Act, *e.g.*, to approve and implement the United States-Morocco Free Trade Agreement (the Agreement).

### Sec. 3: Definitions

This section provides definitions for the Act.

## Sec. 101: Approval and Entry into Force of the Agreement

This section provides Congressional approval for the Agreement and its accompanying Statement of Administrative Action. It also authorizes the President to exchange notes with the Government of Morocco to provide for the entry into force of the Agreement on or after January 1, 2005.

## Sec. 102: Relationship of the Agreement to United States and State Law

This section establishes the relationship between the Agreement and U.S. law. It clarifies that no provision of the Agreement will be given effect under domestic law if it is inconsistent with federal law.

This section also clarifies the relationship between the Agreement and state law and precludes any private right of action or remedy against a federal, state, or local government, or against a private party, based on the provisions of the Agreement.

## Sec. 103: Implementing Actions in Anticipation of Entry into Force and Initial Regulations

This section provides the authority for the President to proclaim such actions, and for regulations to be issued, that are necessary to ensure that any provision of the Act that takes effect on the date that the Agreement enters into force is implemented on such date.

## Sec. 104: Consultation and Layover Provisions for, and Effective Date of, Proclaimed Actions

This section sets forth traditional consultation and layover procedures that must precede the President's implementation of any tariff modifications by proclamation. Under the consultation and layover provisions, the President must obtain the advice of the private-sector advisory committees and the U.S. International Trade Commission (ITC) on a proposed action. The President must submit a report to the Senate Committee on Finance and the House Committee on Ways and Means setting forth the action proposed, the reasons therefore, and the advice of the private sector and the ITC. The Act sets aside a 60-day period following the date of transmittal of the report for the President to consult with the Committees on the proposed action.

## Sec. 105: Administration of Dispute Settlement Proceedings

This section authorizes the President to establish within the Department of Commerce an office responsible for providing administrative assistance to dispute settlement panels established under Chapter 20 of the Agreement. This section also authorizes the appropriation of funds to support this office.

**<u>Sec. 106:  Arbitration of Claims</u>**

This section authorizes the United States to utilize binding arbitration to resolve investment claims covered by the Agreement that involve government contracts.

**<u>Sec. 107:  Effective Dates; Effect of Termination</u>**

This section provides effective dates for the Act.  Section 107 also provides that the provisions of the Act will no longer be in effect should the Agreement cease to be in force.

## TITLE II – Customs Provisions

**<u>Sec. 201:  Tariff Modifications</u>**

This section authorizes the President to implement by proclamation the continuation, modification or elimination of tariffs as the President determines to be necessary or appropriate to carry out the terms of the Agreement.  Pursuant to Section 201, Morocco's designation as a beneficiary developing country under the Generalized System of Preferences program shall be terminated once the Agreement enters into force.

**<u>Sec. 202:  Additional Duties on Certain Agricultural Goods</u>**

Section 202 implements the agricultural safeguard provisions of the Agreement, under which additional duties will be assessed on imports of certain agricultural goods if the unit import price is less than the specified trigger price for that good set forth in Annex 3-A of the Agreement.  Section 202 also terminates the applicability of the safeguard mechanism to a good on the day such good becomes duty-free under the Tariff Schedule of the United States to Annex IV of the Agreement.

**<u>Sec. 203:  Rules of Origin</u>**

This section provides the rules of origin for goods under the Agreement and authorizes the President to modify some of the Agreement's rules of origin by proclamation, subject to the consultation and layover provisions of Section 104 of the Act. This section also includes definitions for terms used in determining the origin of goods under the Agreement.

A good qualifies for preferential treatment under the terms of the Agreement if it is imported directly from Morocco into the United States or vice versa and it is either: (1) "wholly the growth, product, or manufacture of Morocco, the United States, or both"; (2) a "new or different article or commerce" that has been grown, produced, or manufactured in Morocco, the United States, or both and a 35-percent content value test is satisfied; or (3) a good covered by product-specific rules set forth in Annex 4-A or annex 5-A of the Agreement and satisfies all other applicable requirements of section 203.

**Sec. 204: Enforcement Relating to Trade in Textile and Apparel Goods**

This section authorizes the President to suspend liquidation of entries of textile or apparel goods produced or exported by a person based upon a reasonable suspicion of unlawful activity, pending verification that the person is complying with all applicable customs rules and regulations. The section also authorizes the President to suspend liquidation of entries of textile or apparel goods pending verification that such goods qualify for preferential treatment under the Agreement.

If the President is unable to verify within 12 months that the person producing or exporting the textile or apparel good is complying with applicable customs rules and regulations, this section authorizes the President to deny preferential treatment and/or entry to textile or apparel goods produced by or exported by that person.

Additionally, if the President is unable to verify within 12 months that the textile or apparel good qualifies for preferential treatment, this section authorizes the President to deny preferential treatment and/or entry to those goods.

**Sec. 205: Regulations**

This section requires the Secretary of the Treasury to prescribe regulations necessary to implement the rules-of-origin provisions of the Agreement.

## TITLE III – Relief from Exports

**Sec. 301: Definitions**

This section contains definitions for this title.

### Subtitle A – Relief from Imports Benefiting from the Agreement

**Sec. 311: Commencing of Action for Relief**

This section sets forth provisions regarding the commencement of bilateral safeguard investigations. Pursuant to the Agreement, Section 311 exempts from investigation under this section Moroccan articles that previously have been subject to safeguard relief under this subtitle.

**Sec. 312: Commission Action on Petition**

This section establishes deadlines for U.S. International Trade Commission (ITC) determinations following the initiation of a bilateral safeguard investigation. Section 312 also provides that, if the ITC makes an affirmative determination or a determination that the President may consider to be an affirmative determination, the ITC must find and recommend to the President the amount of import relief that is necessary to remedy or prevent the serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

**Sec. 313: Provision of Relief**

This section authorizes the President to provide relief under the bilateral safeguard provisions of the Act. The period of initial relief may not exceed three years. The total period of relief, including any extension of relief, may not exceed five years in the aggregate. This section also specifies the rules for determining the applicable rate of duty after such relief terminates.

**Sec. 314: Termination of Relief Authority**

This section terminates the President's authority to take action under the bilateral safeguard provision after five years from the date on which the article subject to relief becomes duty-free under the terms of the Agreement. The President may still take such action under the bilateral safeguard provision after such five-year period, but only to the extent the President determines that the Government of Morocco consents to such action.

**Sec. 315: Compensation Authority**

This section authorizes the President to provide trade compensation to Morocco when the United States imposes relief through a bilateral safeguard action.

**Sec. 316: Confidential Business Information**

This section incorporates existing procedures regarding the release of confidential business information to apply in bilateral safeguard investigations under the Agreement.

**Subtitle B – Textile and Apparel Safeguard Measures**

**Sec. 321: Commencement of Action for Relief**

This section sets forth procedures regarding the commencement of actions under the Agreement's safeguard mechanism available to domestic textile and apparel industries.

**Sec. 322: Determination and Provision of Relief**

This section sets forth procedures regarding the President's determination as to whether a domestic industry is eligible for relief under the textile and apparel safeguard mechanism.

**Sec. 323: Period of Relief**

This section provides that the initial period of relief under the textile and apparel safeguard shall be no longer than three years. That period may be extended by up to two years if the President determines that an extension is necessary to remedy or prevent serious damage and to facilitate adjustment to import competition and that the domestic industry is making a positive adjustment to import competition.

**Sec. 324: Articles Exempt from Relief**

This section exempts textile and apparel articles from relief under the textile and apparel safeguard if relief previously has been granted to such articles under this safeguard or such articles are currently subject to import relief under the global safeguard provisions of Section 201 of the Trade Act of 1974.

**Sec. 325: Rate after Termination of Import Relief**

This section provides that the duty rate applicable to a textile or apparel article after import relief expires will be the duty rate that would have been in effect on that date but for such import relief.

**Sec. 326: Termination of Relief Authority**

This section provides that authority to provide relief under the textile and apparel safeguard will expire 10 years after the date on which duties on the relevant article are eliminated under the Agreement.

**Sec. 327: Compensation Authority**

This section authorizes the President to provide trade compensation to Morocco when the United States imposes relief pursuant to the Agreement's textile and apparel safeguard provisions.

**Sec. 328: Business Confidential Information**

This section sets forth provisions concerning the release of business confidential information submitted to the President in connection with a request for action pursuant to the textile and apparel safeguard provisions of the Agreement.

## Administration Position

While no formal Statement of Administration Policy (SAP) has been released on S. 2677, the Administration has expressed repeatedly that it strongly supports passage of the United States-Morocco Free Trade Agreement Implementation Act.

## Cost

As of press time, no cost estimate was available.

## Possible Amendments

Under trade promotion authority provided by the Trade Act of 2002, no amendments to this bill are permitted.